SUPREME COURT, U. S.

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IN THE

# United States Supreme Court

OCTOBER TERM, 1966

NO. 948

BOOKER T. DUKE,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ROBERT H. VAN BRUNT,
233 Lemcke Building,
106 E. Market Street,
Indianapolis, Indiana 46204

PAUL H. FRAZIER,
315 Lemcke Building,
106 E. Market Street,
Indianapolis, Indiana 46204
*Attorneys for Petitioner.*

FERDINAND SAMPER,
703 First Federal Building,
11 N. Pennsylvania St.,
Indianapolis, Indiana 46204
*Of Counsel.*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Booker T. Duke, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above case.

## JUDGMENT AND OPINION OF THE COURTS BELOW

The judgment of the United States District Court for the Southern District of Indiana, Indianapolis Division, was entered on the 14th day of October, 1965, and appears in the record filed with and certified by the Clerk of the Court of Appeals and transmitted herewith.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming the said judgment, was filed November 15, 1966, and is not yet reported but is set forth in the appendix hereto and in the certified copy of the record.

## JURISDICTION

Appellant by Counsel filed his Petition for Rehearing on November 28, 1966. On the 7th day of December, 1966 the United States Court of Appeals for the Seventh Circuit denied Appellant's Petition for Rehearing. On December 9, 1966 Petitioner filed his Petition to Stay Issuance of Mandate in the United States Court of Appeals for the Seventh Circuit and the Court issued a stay of mandate until January 10, 1967. The jurisdiction of this Court is invoked under the rules of the Supreme Court of the United States under Part V (Jurisdiction on Writ of Certiorari), Rule 19 (b).

Likewise, the jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

## QUESTIONS PRESENTED

1. Were the Appellant's rights as contained in the Fourth and Fourteenth Amendments to the Constitution of the United States violated when he was searched without a

warrant and when there was no probable cause for the Appellant's arrest or the search and seizure?

2. Is an uncorroborated heresay statement from an informer enough to constitute probable cause to make an arrest and search?

3. Is it probable cause when the Government, in effect, concedes that the arresting officer did not have probable cause to arrest and search Petitioner until the Petitioner was seen and stopped upon the highway? (See page 2 of the Government's (Appellee's) brief.)

4. Were the Petitioner's rights violated under the Sixth Amendment to the United States Constitution when the Government failed to produce the informer at the trial and thus denying the Petitioner the right of confrontation and the right of cross examination?

5. Do the arresting officers have to immediately advise the accused (the Petitioner) of his right to remain silent and advise him that what he might say can be used against him, or can they wait and do this after admissions have been made by Petitioner.

6. Was there "probable cause" to justify a search and seizure when there was no showing by the Government of the reliability of the informer?

## STATEMENT OF THE CASE

Petitioner was convicted by a jury on Count III of the indictment which charged that the Petitioner on or about October 15, 1964 did knowingly receive, conceal and facilitate the transportation and concealment of 163 grams, more or less, of heroin hydrochloride, a narcotic drug, which had been previously imported into the United

States contrary to law, knowing the same to have been unlawfully imported, in violation of Title 21, United States Code 174. Petitioner was found guilty and sentenced to a term of five years in prison.

## EVIDENCE

The evidence briefly stated is as follows:

The defendant was arrested without a warrant for his arrest and he and his car were searched without a search warrant.

The arrest of the defendant was by a cycle or traffic officer of the Indianapolis Police force by the name of Wycliff Roland Gibson. He had been told by a narcotics officer, Richard A. Jones, at 10:30 A. M. or 11:00 A. M. on October 15, 1964 to stop the car the defendant was in.

The defendant was stopped and arrested and searched 3:10 P. M. on the same day, some 4 to 4-1/2 hours later.

The arrest was also made by an Indianapolis Police Officer of the Narcotics section, Richard A. Jones, who stated he made the arrest because he had information from an informer whose name was Emanuel Sims, and who was a drug addict.

Officer Jones testified he did not attempt to get a warrant for the arrest of the defendant.

The officer also testified *he had no other information to base this arrest on other than the information he got from the informer,* Emanuel Sims.

The officer later testified that he had observed a large amount of traffic in and out of the defendant's pool room and had heard rumors concerning the defendant. Officer

Jones testified in regard to the rumors in response to a question, by the attorney for the defendant, that this was a suspicion, not probable cause and he answered that was right.

The following questions were asked of Officer Jones by the defense attorney Charles A. Walton on pages 56 and 57 of the transcript, and these answers were given:

"Q How many other arrests have you made as a result of the information give you by Emanuel Sims?

"A Three or four.

"Q Have you ever arrested Emanuel Sims for being a drug addict?

"A Yes, sir.

"Q How many occasions?

"A One.

"Q On Direct examination you stated that immediately after you talked to Emanuel Sims you set up your surveillance.

"A Yes, sir; I put the process in motion immediately thereafter.

"Q You didn't make an arrest until after three o'clock, did you not?

"A That's correct.

"Q Did you try to find a magistrate in order to get a warrant for the arrest of Mr. Duke and Mr. Allen?

"A No, sir."

The traffic officer Gibson stated he stopped the car the defendant was in and in a matter of seconds the Narcotics officer pulled up behind the car he stopped.

Officer Gibson testified that he pulled the car the defendant was in over for speeding.

Gibson further testified that the only reason he stopped the car was because the other officers had told him to do so and then he retracted that statement on the court's questioning.

He also testified he would have stopped the car if it was going 25.

He stated the car was going 14 miles over the speed limit.

The defendant-appellant was arrested at about 3:00 P. M. and was returned to the Police Station and apparently booked at about 8:00 P. M. Officer Jones testified that from the time he arrested the defendant until the time he got him back to the police station 4-1/2 to 5 hours had elapsed.

All this time the defendant was without a lawyer. The defendant made a number of statements to Mr. Jones, before he ever talked to a lawyer.

Officer Jones, the Narcotics officer, testified he told traffic officer Gibson to stop the car defendant was in whether a traffic violation was being committed or not.

Officer Jones testified during the trial that he had tried to find the informer, Emanuel Sims, but couldn't find him.

Officer Gibson stated he was watching for the car defendant was in. That he was watching for a cream colored car.

There was no testimony that the defendant-appellant knew that the said narcotic drugs had been unlawfully imported into the United States contrary to law.

The trial court admitted into evidence, over defendant-appellant's objection, the said narcotic drugs seized from the defendant's car without a warrant.

At the hearing on defendant's motion for a new trial the informer, Emanuel Sims, who was not produced during the trial, testified that he did not even know the defendant, Booker T. Duke, and testified that he signed an affidavit that he did not tell Sgt. Jones that the defendant, Booker T. Duke, was going to Chicago to pick up narcotics.

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The search incident to the arrest of the Petitioner violated the Petitioner's rights under the Fourth and Fourteenth Amendments of the United States Constitution. The Petitioner was found guilty of having violated Title 21, United States Code, Section 174.

The language of the Fourth Amendment to the United States Constitution that no warrants shall issue, but upon probable cause has been held to apply to arrest as well as search warrants. See: *Giordenello v. United States,* 357, U.S. 480.

The Petitioner's rights under the Fifth Amendment to the United States Constitution were also violated when he was not immediately told upon his arrest of his right to remain silent and not testify against himself as set out in the Fifth Amendment.

The Fifth Amendment to the Constitution provides: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use."

The Petitioner's rights under the Sixth Amendment to the United States Constitution were also violated when the Government failed to produce the informer at the time of the trial.

The Sixth Amendment to the Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

## REASONS FOR GRANTING THE WRIT OF CERTIORARI AND ARGUMENTS AMPLIFYING THE SAME

Certiorari should be granted because this decision in this case by the United States Court of Appeals for the Seventh Circuit is in conflict with the applicable decisions of the United States Supreme Court concerning federal

and constitutional questions, and for the further and separate reason that there are certain basic rights guaranteed by the Constitution of the United States that have never been passed on by this Court. It was urged in the Appellant's brief, and is urged now, that the officers neglect in failing to obtain a warrant violated the Petitioner's constitutional rights. It may be assumed in this case that the officers involved acted in good faith in arresting the Petitioner, but good faith on the part of the arresting officers has been held to be not enough. See: *Henry v. United States,* 361 U.S. 98.

In the instant case the Petitioner at the trial moved to suppress the evidence as being seized without a search warrant and without probable cause.

Undoubtedly the informer did relate information to the police which caused the Petitioner's arrest and search. When the constitutional validity of the arrest was challenged it was incumbent upon the prosecution to show more specifically why the officer thought the information from the informer was credible. See: *Beck v. Ohio,* 379 U.S. 89.

The United States Court of Appeals for the Seventh Circuit in the instant case ignores the findings in *Beck v. Ohio* (Supra).

Neither the Government nor the Seventh Circuit Court of Appeals dwelled on the alleged speeding of the vehicle in which the Petitioner was riding. Suffice to say that the police officer who stopped the car stated in substance that he would have stopped the car regardless of the speed involved. The Government's brief did not seriously dispute the contention of the Petitioner that the charge of speeding was a subterfuge. The record clearly indicates that the police officers were looking for this particular

car and were going to stop this particular car in any event. The Seventh Circuit Court of Appeals opinion does not even discuss the alleged speeding involved other than mentioning it in a brief statement of the evidence. The Appellate Court's entire opinion virtually revolves around the issue of probable cause and the issue of whether the Petitioner was fully advised of his right to an attorney and his right to remain silent.

There is no serious dispute that the officers waited around for the Petitioner to appear for approximately five hours. During this time there was no attempt by any of the officers involved to obtain an arrest warrant or a search warrant.

The Appellate's Court's opinion states that the officers had a solid basis for belief that the defendant and his companion might be returning to Indianapolis at any time. The record does not indicate there was any such solid basis as the police officers only had the heresay statement of an informer that the Petitioner had gone to Chicago.

The Appellate Court, in the opinion, took judicial notice that the distance from Chicago to Indianapolis and return was less than 400 miles, or about an eight hour drive. By using an eight hour time period the Court assumes, and we think incorrectly, that the Petitioner would immediately turn around after arriving in Chicago and return to Indianapolis. If the officers relied on the informer, as they stated, then the natural and logical assumption would be that the Petitioner would be in Chicago for at least some period of time in order to make the transaction which the informer stated was to occur. The time element is calculated on the basis that the officers received information from the informer at about 10:00 A. M. and the Petitioner's

arrest and search did not take place until 3:00 P. M. on the same day. It is also pertinent that according to the information furnished to the police officers by the informer that the Petitioner left Indianapolis for Chicago at 3:00 A. M. on the same day. Therefore, it is obvious that the officers had between three and four hours at the very least in which to obtain a warrant, which they did not attempt to do; even though the undisputed evidence is that the courts were open.

The Seventh Circuit Court's opinion in this case relies upon *Draper v. United States,* 358 U. S. 307, but in that case the record showed that a named special employee of the narcotics agents had on numerous occasions given *reliable information* to the said narcotics agents.

In this case, the informer had been arrested for being a drug addict by one Officer Jones. The informer then testified at a later hearing on the Petitioner's second motion for a new trial, under oath, that he never made the statements attributed to him to Officer Jones.

There was no showing by the Government or in the record that any of the past information furnished by the informer to Officer Jones, had proven to be reliable.

Officer Jones testified during the trial that he had made ficer Jones testified during the trial that he had made three or four arrests as a result of information given to him in the past by Emanuel Sims, the informer. But there was no testimony by him, or evidence submitted that the information given had proven reliable or whether the arrests had resulted in convictions. In other words, the entire record in this cause is completely void of whether the past information given by the informer, Emanuel Sims, had proven to be reliable. The mere statement by Officer Jones during the trial that he had made three or four

arrests as a result of information from Emanuel Sims did not in any way inform the jury or the court whether the information had proven to be reliable.

The opinion by the Appellate court fails to note this distinction as to whether the information given in the past had proven to be reliable. This is a vital and important distinction. The United States Supreme Court in *Beck v. Ohio,* 379, U. S. 89, 13 L ed 2d 142, 147 in referring to the Draper case stated:

> "* * * The respondent relies upon Draper v. United States, 358 U. S. 307, 3 L ed 2d 327, 79 S. Ct 329. But in that case the record showed that a named special employee of narcotics agents who had on numerous occasions given *reliable information* had told the arresting officer that the defendant, whom he described minutely, had taken up residence at a stated address and was selling narcotics to addicts in Denver.* * *" (Emphasis ours)

The Appellate court in this case begs this question when they merely cite in their opinion the fact that Officer Jones had made three or four arrests as a result of information furnished by the informer Sims. This court can take judicial notice that many bad arrests are made, and that the arrests made may not have resulted in convictions. It was incumbent upon the Government to show this past information had proven reliable as we read *Beck v. Ohio,* Supra. A mere arrest does not indicate that a person was guilty or did the things that he was arrested for.

At the trial, no search warrant or arrest warrant was produced by the Government, nor was the failure to produce one accounted for or explained. This the Government was obligated to do. See: *Mapp v. Ohio,* 367, U. S. 643, 6 L ed 2d 1081.

The informer, Emanuel Sims, made the following affidavit which was submitted with defendant's motion for a new trial, that he did not make the statements to Officer Richard Jones about the Defendant-Petitioner. Sims also testified at the hearing on the motion for a new trial that he did not even know the Petitioner during October of 1964.

"EXHIBIT A:

"TO WHOM IT MAY CONCERN:

"I, Emanuel Sims do voluntarily make this statement. During the month of October, 1964 at no time did I tell detective sergeant Richard Jones that Booker T. Duke and Richard Allen was going to Chicago to pick up a load of dope, nor did I tell any member of the police department anything concerning any dope or Booker T. Duke or Richard Allen during the month of October, 1964.

/s/ Emanuel Sims
Emanuel Sims

WITNESS:

/s/ Hawitt A. Washington
/s/ Walter Collins
/s/ Robert E. Durley

"Subscribed and sworn to before me this 23rd day of October, 1965.

Notary Public /s/ Leon Coleman
My Commission Expires February 5, 1968"

The Government in this cause is in an unusual position. They would have this court believe that the informer Sims was a reliable informer and worthy of belief when he makes certain unsworn heresay statements to Officer Jones, but at the same time they urge that his statements

and testimony be disregarded and disbelieved as unreliable when he signs a sworn affidavit and when he comes into court and gives testimony.

In other words, they say believe Sims when it is convenient for the Government and don't believe Sims when it helps the defendant. This inconsistency is hard to fathom. On one hand the Government says this is an informer who was reliable and worthy of belief, yet the Government failed to produce him at the trial and when he was later produced and testified, under oath, the Government in effect says don't believe this witness; he is unreliable. Thus on the one hand they say Sims is reliable, and on the other hand he is unreliable and not worthy of belief.

It may be that in some cases, as this court has often pointed out, that a person who has violated the law may go free, but our laws are for all people; and it is the law that sets him free. This court stated in *Mapp v. Ohio*, Supra:

> "* * * There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine '(t)he criminal is to go free because the constable has blundered.' People v. Defore, 242 NY, at 21, 150 N. E., at 587. In some cases this will undoubtedly be the result. But, as was said in Elkins, 'there is another consideration—the imperative of judicial integrity'. 364 U. S., at 222. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws or worse, its disregard of the charter of its own existence. As Mr. Justice Brandeis, dissenting, said in Olmstead v. United States, 277 U. S. 438, 485, 72 L ed 944, 959, 48 S Ct 564, 66 ALR 376 (1928): 'Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people

by its example . . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.' "

See *Mapp v. Ohio* 367 U. S. 643, 6 L ed 2d 1081, 1092.

It must be remembered that it was Officer Richard A. Jones that the informer talked to; and that Officer Jones testified that he had no other information to base this arrest on other than the information that he received from the informer. Thus, the reliability and credibility of the informer is of paramount importance in this case as shown by the cases cited.

Officer Jones had made some bad arrests, or some good arrests, as a result of some past information from the informer. This we don't know. We are in the dark as to the outcome of the three or four arrests that Officer Jones had made based on information from the informer. Were these past cases thrown out, dismissed, lost, or won? Were the cases lost or thrown out because the information the informer supplied had proven unreliable?

One would tend to question the reliability of the informer when he testifies in court under oath that he didn't make the statements attributed to him by Officer Jones, and yet according to Officer Jones the statements had been made by the informer. The informer further testified at the hearing on the motion for a new trial that he had never given Detective Jones information in the past about anyone who was committing a crime. These inconsistent statements seem to make it quite clear that Sims was very unreliable. In order for the Government to properly sustain its position on probable cause the information given previously by the informer must have been shown to be reliable.

The court in *Jones v. United States,* 1960, 362 U. S. 257 4 L ed. 2d 697, again dealt with the question of "probable cause." The court pointed out that the information given previously by the informant had been accurate.

The United States Court of Appeals for the Eighth Circuit stated in *Cochran v. United States,* 291, F 2d 633, on page 737 (1961) the following:

> "* * * Here the primary question is not the informer's identity but his reliability or credibility as bearing upon the issue of probable cause. * * *"

This is the same issue in the Petitioner's case. The question is his reliability or credibility bearing on the issue of probable cause.

The guarantee of freedom from unreasonable search and seizure is construed as recognizing a necessary difference between search of a dwelling house or an automobile. However, those entitled to use the public highways have a right to free passage without interruption or search unless the seizing officer has "probable cause" for such search and seizure. See *United States v. Di Re,* 332 U. S. 581.

Where one who has knowledge of the facts and is not called by the prosecution as a witness in a criminal case, and is not shown to be unavailable it must be assumed that his testimony would not have been helpful to the prosecution. See *United States v. Di Re,* Supra.

While the informer was called to a later hearing on defendant's motion for a new trial the informer was not produced at the trial nor was there any valid explanation given why he was not available for the trial and produced at the trial. Also the court did not give the jury an instruction regarding this presumption.

One officer testified he looked for Sims but couldn't find him. Here the Government with all its resources couldn't locate this one witness, but he was easily produced at the hearing on the motion for a new trial.

This Court has never passed on the proposition that it is error to try a defendant for the possession of heroin when the informer to the Government, or to the officer, was unavailable as a witness. The United States Court of Appeals for the Second Circuit held that it was not error to try the defendants for selling heroin and for conspiracy while the Government informer was unavailable as a witness. However, Circuit Judge Waterman dissenting, held under the circumstances, it was error. See: *United States v. Cimino* (Joseph D'Ercole), 321, F 2d 509, 512.

In that case the Government took the position there was no duty to produce the informer as a witness. It appeared in that case, as in this case, that the Government made no real attempt to produce the informer as a witness. None of the federal agents who testified during the trial in the instant case stated that they made a search for the informer in order that he be a witness at the trial. One of the city police officers testified that he looked for the informer and could not find him. There was no indication that the Government even tried or attempted to get the informer to the trial as a witness in this case. Officer Jones, who testified on behalf of the Government, repeated certain statements the informer was alleged to have made to him, but at no time during the trial did the Defendant-Petitioner have the opportunity to cross examine the absent informer, or to confront the absent informer in violation of the Petitioner's constitutional rights under the Sixth Amendment to the United States Constitution.

Petitioner pointed out in his Petition for Rehearing that the Government had failed to produce the informer as a witness at the trial and thereby denying the Appellant-Petitioner of the consitutional right of confrontation of the witness.

The Petitioner did not have this point in the argument portion of his brief but pointed this fact out in his Petition for Rehearing and further pointed this fact out on Page 19 of the Appendix to Appellant's brief wherein the trial counsel, Mr. Walton, at the time of the trial made a motion to strike based in part on this lack of confrontation. Further a manifest error involving a violation of a constitutional right could be raised at any time. The Petitioner quoted the trial counsel in his brief to the United States Court of Appeals for the Seventh Circuit where the following statement was made:

> "This Defendant had the right to be confronted by his accuser, and the United States Government was unable to bring this Defendant's accuser to court, and the probable cause which they alleged they had for making the initial arrest rested solely on the alleged information given by this informant who is unavailable."

(See Page 19 of Appendix to Appellant's brief)

Further, in Petitioner's original motion for a new trial Petitioner moved for a new trial on the grounds that the verdict of the jury was contrary to the law and also on the grounds that the verdict of the jury was contrary to the evidence. While these are the general statements in a motion for a new trial they have been held to sufficiently cover a violation of one's constitutional rights. Also, these same matters were argued and heard during the hearings on the motions for a new trial. Also, the fact that the in-

former was not produced during the trial was mentioned in the argument before the United States Court of Appeals.

It may be that by producing the informer in Court that this would affect the informer system used by the Government in these types of cases. However, we believe that Judge Waterman's position is well taken where he states:

> "... It may further be suggested that a rule of evidence requiring the testimony of informers in criminal trials will adversely affect the entire informer system upon which the Government appears so heavily to rely in narcotics cases. I do not doubt that informers may be expected to resist any loss of the anonymity within which they operate. The evidentiary presumption which I believe to be applicable to this case, however, only arises in a limited few cases,—those cases where the informer is quite obviously better able to testify to the facts in issue than are alternative Government witnesses. Moreover, the Government's alternative evidence may often be, as in the case of appellant Cimino, sufficiently strong to withstand any unfavorable inference created by a failure to call the informer...."

See *United States v. Cimino*, 321 F. 2d 509 on page 517.

As stated heretofore, the Government's position in this case has mainly been on the theory of "probable cause" that the arrest and search were justified in the Government's opinion because of probable cause.

The arrest on the speeding charge in the instant case was for the purpose of search. The purpose of search was uppermost in the officers' minds. The speeding charge must be looked at suspiciously because the testimony of

the officers was that they were going to stop this car in any event. There is no doubt that they were going to search this car in any event. The United States Court of Appeals for the Ninth Circuit stated the following:

> "The violation of a constitutional right by a subterfuge cannot be justified and the circumstances of this case leave no other inference than that is what was done with the traffic arrest warrant here."
>
> *Taglavore v. United States* (1961), 291 F. 2d 262.

Obviously, the same thing again applies. The circumstances in the instant case would leave no other inference than that what was done was for the purpose of the search.

The court in the Taglavore case pointed out on Page 266:

> "Were the use of misdemeanor arrest warrant as a pretext for searching people suspected of felonies to be permitted a mockery could be made of the Fourth Amendment and its guarantees. The courts must be vigilant to detect and prevent such a misuse of legal processes."

The point then becomes crystal clear. If it is wrong to use a misdemeanor arrest warrant as a pretext for searching people, it is equally wrong to use a misdemeanor arrest as a pretext for searching people. Particularly when the officers sit there waiting for a supposed misdemeanor to happen.

The United States Supreme Court decision starting with *Escobedo v. Illinois* (1964) 378 U. S. 478 has extended certain constitutional rights to the defendant from the time of the initial arrest. This court has held that it is the

duty of the police officers to warn the accused that what he might say can be used against him at a trial and to inform him of his right to an attorney and his right to remain silent.

In this case the officers did inform the Petitioner of his right to remain silent and his right to have an attorney represent him, but after he had made certain damaging admissions. It is Petitioner's understanding of recent rulings that the officers have a duty to immediately advise the accused of his right to remain silent and his right to have an attorney before the damaging admissions are made.

It is correct as the Seventh Circuit Court states in this case that there is no duty of the officers to gag an accused but the advice and statement that the accused can remain silent is a little late when it comes after the admissions have been made. This is what happened here. After the Petitioner had made damaging statements to police officer Dora Ward, the witness Dora Ward told Petitioner, "You don't have to talk to me at all." Later at headquarters Sgt. Jones told the petitioner he could have a lawyer summoned for him. Thus, it is apparent that the Petitioner was advised of his constitutional rights, but not immediately and not before any admissions were made.

## CONCLUSION

There is a need for clarification on the proposition that the informer should be produced at a trial to afford the

Petitioner the right of cross examination and confrontation. The Seventh Circuit Court of Appeals states there is no duty on the part of police officers to gag or seal the lips of a person under arrest or in custody in order to prevent them from making a statement. There is need, therefore, for clarification at what point must the officers advise the accused of their constitutional rights to remain silent and to have an attorney.

In line with this Court's past decisions, there has been a necessity to show the reliability of the informer. There is no question that this was not done in this case. Therefore, the Seventh Circuit Court of Appeals has not followed this Court's decisions in this case on the issue of reliability of the informer.

The practice of not producing the informer in Court by the Government should be stopped.

The fact that the informer later testified and gave an affidavit that he did not give the police officer the information attributed to him pinpoints the informer's lack of reliability and casts a strong doubt as to whether there was probable cause in which to seize and search the Petitioner.

It is respectfully submitted that this is a case where injustice has been done and a grevious mistake has been made.

The issuance of a Writ of Certiorari by this Court is necessary for the ultimate administration of justice.

Respectfully submitted,

ROBERT H. VAN BRUNT,
233 Lemcke Building,
106 E. Market Street,
Indianapolis, Indiana 46204

PAUL H. FRAZIER,
315 Lemcke Building,
106 E. Market Street,
Indianapolis, Indiana 46204
*Attorneys for Petitioner.*

FERDINAND SAMPER,
703 First Federal Building,
11 N. Pennsylvania St.,
Indianapolis, Indiana 46204
*Of Counsel.*